

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DELORES DUTTON-DEAL)	
Claimant)	
VS.)	
)	Docket Nos. 217,887 & 219,892
DETROIT DIESEL REMANUFACTURING-CENTRAL)	
Respondent)	
AND)	
)	
OLD REPUBLIC INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the Award dated March 30, 1998, entered by Administrative Law Judge Jon L. Frobish.

APPEARANCES

Michael G. Patton of Emporia, Kansas, appeared for the claimant. Richard W. Morefield, Jr., of Kansas City, Missouri, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

By the Award dated March 30, 1998, Judge Frobish found claimant sustained simultaneous injury to both upper extremities and awarded claimant benefits for a 76 percent permanent partial general disability. Respondent and its insurance carrier appealed that award.

The issues now before the Appeals Board are:

- (1) Did the respondent and its insurance carrier timely appeal the Award? Respondent and its insurance carrier contend they timely filed their appeal on April 17, 1998.
- (2) Did the claimant sustain simultaneous repetitive injury to her upper extremities or two separate and distinct injuries? Claimant contends that she sustained simultaneous repetitive injury to her upper extremities and, therefore, is entitled to an award for a nonscheduled injury under K.S.A. 1996 Supp. 44-510e. On the other hand, respondent and its insurance carrier contend claimant sustained two separate and distinct injuries and, therefore, claimant should be compensated for two scheduled injuries under K.S.A. 1996 Supp. 44-510d.
- (3) What is the appropriate date of accident for claimant's injuries? Respondent and its insurance carrier contend the date of injury for the left upper extremity should be the date that Dr. Montgomery gave claimant medical restrictions on February 20, 1996, and in no event later than August 29, 1996, when she had surgery on her left arm. Also, they contend the date of accident to the right arm is September 19, 1996, when claimant advised Dr. Montgomery that she had pain in her right shoulder.
- (4) What is the nature and extent of claimant's injuries and disability? If claimant has sustained a nonscheduled injury, which respondent and its insurance carrier contest, they contend she has not proven a work disability as there is no credible evidence to support a finding of task loss. Respondent and its insurance carrier also contend claimant failed to make a reasonable effort to find employment.
- (5) Did the Judge err by awarding claimant unauthorized medical benefits?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) On March 30, 1998, Judge Frobish completed and signed the Award entered in this proceeding.

(2) On April 17, 1998, the respondent and its insurance carrier filed their application for Appeals Board review.

CONCLUSIONS OF LAW

(1) The Administrative Law Judge's Award is effective the day following the date shown in the Award.¹ The Award entered by Judge Frobish is dated March 30, 1998. Therefore, the effective date of the Award is March 31, 1998.

(2) The parties have ten days to appeal the Judge's decision to the Appeals Board. Saturdays, Sundays, and legal holidays are excluded in computing the ten-day period.²

(3) In computing the ten-day period to appeal, the first day is excluded but the last day is included.³ Because of that rule, April 1, 1998, is the first day that is counted to determine the allotted period to file an appeal to the Appeals Board.

(4) Applying the pertinent statutes and regulations, the ten-day period to appeal Judge Frobish's March 30, 1998 Award is computed as follows:

Day One.	Wednesday, April 1
Day Two.	Thursday, April 2
Day Three.	Friday, April 3
Day Four.	Monday, April 6
Day Five.	Tuesday, April 7
Day Six.	Wednesday, April 8
Day Seven.	Thursday, April 9
Day Eight.	Friday, April 10
Day Nine.	Monday, April 13
Day Ten.	Tuesday, April 14

The last day for filing an appeal to request Appeals Board review was April 14, 1998.

(5) Respondent and its insurance carrier acknowledge that their appeal was not filed until April 17, 1998. They, however, contend they had an additional three days after April 14 because of K.S.A. 1997 Supp. 60-206(e), which allows additional time for mailing.

(6) The Appeals Board disagrees with the contention that K.S.A. 1997 Supp. 60-206(e) is applicable to workers compensation proceedings. The Workers Compensation Act is

¹K.S.A. 1997 Supp. 44-525(a) .

²K.S.A. 1997 Supp. 44-551(b)(1) .

³K.A.R. 51-17-1 .

complete and exclusive. The rules and procedures that are part of the Kansas Code of Civil Procedure but that are not contained in the Workers Compensation Act itself do not apply in a proceeding for workers compensation benefits. As recently as 1996, the Kansas Supreme Court has ruled:

Kansas appellate decisions are replete with statements that the Workers Compensation Act undertook to cover every phase of the right to compensation and of the procedure for obtaining it, which is substantial, complete, and exclusive. We must look to the procedure of the Act for the methods of its administration. Rules and methods provided by the Kansas Code of Civil Procedure not included in the Act itself are not available in determining rights thereunder.⁴

(7) The time for taking an administrative appeal is jurisdictional and delay beyond the statutory time allotted is fatal to the appeal.⁵

(8) As the March 30, 1998 Award became final when the parties failed to file a timely appeal, this appeal should be dismissed. The remaining issues concerning claimant's entitlement to benefits are moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁴Jones v. Continental Can Co., 260 Kan. 547, Syl. ¶3, 920 P.2d 939 (1996).

⁵Keithley v. Kansas Employment Security Bd. of Review, 23 Kan. App. 2d 732, 935 P.2d 1060 (1997); State Bank Commissioner v. Emery, 19 Kan. App. 2d 1063, 880 P.2d 783 (1994).

c: Michael G. Patton, Emporia, KS
Richard W. Morefield, Jr., Kansas City, MO
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director